

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

SECOND APPEAL NO. 453 OF 2019

Vishwanath S/o Jagannath Chintawar
(Dead) through legal representatives

1. Suresh S/o Vishwanath Chintawar,
Aged about 85 years, Occ. Business
R/o Behind Gajanan Mandir, Wadgaon
Road, Chandrapur, Tahsil &
Dist.Chandrapur
2. Suhas S/o Vishwanath Chintawar
(Dead) through legal representatives
- 2-1. Smt. Surekha W/o Suhas Chintawar,
Aged about 64 years, Occ. Housewife
- 2-2. Sau. Sayali W/o Yogesh Bompilwar
Aged about 37 years, Occ. Housewife
- 2-3 Sau. Tejaswani W/o Samir Kulkarni,
Aged about 33 years, Occ. Housewife
All R/o Ganj Ward, Chandrapur, Tahsil
& Dist. Chandrapur
3. Rajesh S/o Vishwanath Chintawar,
Aged about 66 years, Occ. Business
4. Shashikant S/o Vishwanath Chintawar,
Aged about 61 years, Occ. Business
Nos. 3 and 4 are resident of Near
Saibaba Mandir, Civil Lines,
Chandrapur, Tehsil and District
Chandrapur
5. Sau. Meena Babanrao Belorkar,
Aged about 78 years, Occ. Household,
R/o Ghatanji, Tehsil and District
Yavatmal
6. Sau. Shobha Arun Kontamwar,

Aged about 71 years, Occupation:
Household R/o Plot No. 84, Jijau
Apartment, Pande Layout, Nagpur

7. Sau. Pushpa Chandrakant Pratapwar
Aged about 68 years, Occupation
Household R/o Badnera Road,
Amravati Tah. & Dist. Amravati
...(Original Plaintiffs)

...Appellants

// VERSUS //

1. Maharashtra State Electricity
Distribution Company Ltd., A
Company registered under Companies
Act, 1956 to be served through its
Deputy Executive Engineer (CCO &
M), Urban Sub-Division No.2,
Mamidwar Building, Hospital Ward,
Chandrapur, Tahsil & District
Chandrapur
2. Meghsham S/o Keshao Bhagwat
Aged about 77 years, Occ. Business,
R/o Samadhi Ward No.2, Chandrapur,
Tahsil and District Chandrapur
3. Purushottam S/o Keshao Bhagwat
(Dead) through legal representatives
 - 1) Smt. Ratanmala Purushottam
Bhagwat, Aged about 69 years, Occ.
Retired
 - 2) Mitin S/o Purushottam Bhagwat,
Aged about 46 years, Occ. Broker
 - 3) Dr. Nikhil S/o Purushottam
Bhagwat, Aged about 42 years, Occ.
Doctor
 - 4) Sau. Pranali Nilesh Khobragade,
Aged about 43 years, Occ. Service

Nos. 1 to 4 are resident of Near
Asayan, Dadmahal Ward, Chandrapur,
Tahsil and District Chandrapur

5) Vaibhav S/o Purushottam Bhagwat,
Aged about 39 years, Occ. Service
R/o Mate Chowk, Gopal Nagar,
Nagpur Tahsil and District Nagpur

(Original Defendants)

..... Respondents

Shri M.P.Khajanchi, Advocate for the appellants.

Shri M.B.Turankar, Advocate for the respondent No. 2, 3(1) to (5).

CORAM : ANIL S. KILOR, J.

Judgment reserved on : 4th May, 2023

Judgment pronounced on : 5th June, 2023.

JUDGMENT

This appeal takes exception to the judgment and decree dated 10th August, 2011 passed by 7th Joint Civil Judge (Junior Division), Chandrapur in Regular Civil Suit No. 176 of 2009 as well as the judgment and decree dated 23rd July, 2019 passed by the learned Principal District Judge, Chandrapur in Regular Civil Appeal No. 200 of 2011, dismissing the appeal and thereby upholding the dismissal of the suit filed by the appellants/plaintiffs for the mandatory injunction to provide electric connection in the suit premises.

2. The brief facts of the present case are as under : (The parties are referred to as per their status before the trial Court)

The plaintiff is the tenant in the suit premises i.e. a shop in a building situated in Bazar Ward, Chandrapur.

3. The plaintiff was running the business of perishable commodities like milk and milk products having cold storage/refrigerator in the suit premises and needed an electric supply. The plaintiff has an electric connection in his name recorded as Shri V.S.Chintawar consumer No. 450010068423 taken from Electric Pole No. C-298, since from beginning of his tenancy.

4. The above said connection was permanently disconnected by the defendant No.1 on 28th February, 2007. When plaintiff applied for re-connection defendant no.1 agreed to re-connect on payment of arrears of Rs.5690/- which plaintiff paid on 27th July, 2009. However, defendant no.1 did not reconnect electric supply, saying that, the landlord has raised an objection to it.

5. Plaintiff therefore issued a notice demanding the re-connection and also damages suffered by him, due to the disconnection. Defendant no.1 replied to that notice and informed that, permanently disconnected supply could not be restored and the plaintiff will have make fresh application for new connection. Hence, on or before 18th & 19th September, 2009 plaintiff applied for a new connection but defendant no.1 refused to accept it. But the plaintiff sent the said application with its accompaniments on 23rd September, 2009. However, defendant no.1 refused to provide electric connection without the order of Court. Hence, this suit.

6. Defendant no.1 appeared and resisted the suit by filing their written statement vide Exhibit 37. They admitted that, the plaintiff had mentioned electric connection which was permanently disconnected on 28th February, 2007. They denied the allegation that, they had refused to give any new connection due to any malafide intention or their conduct was arbitrary, unfair or unreasonable.

7. Defendant no.2 and 3 had appeared suo-moto and resisted the suit by way of written statement vide Exhibit 36. It was their plea that, the plaintiff was not in possession of the suit premises and the possession of the tenanted premises were delivered to third party and hence plaintiff had no necessity of electricity supply on the ground of statutory right under Maharashtra Rent Control Act, 1999 (in short referred as "Rent Act, 1999").

8. They submitted that, the dispute in respect of suit premises is pending vide R.C.S.No. 129/09 Meghasham Vs. Vishwanath in the Court of Joint Civil Judge, Junior Division, Chandrapur whereby they have sought grant of prohibitory injunction against the plaintiff restricting him from creating any third party interest in the suit premises. They have also filed Rent Control Case No. 26/21(2)/97-98 for the eviction of plaintiff from the suit premises before Rent Controller Chandrapur. It is their main defence that, the plaintiff is an old aged man. He has stopped his grain business and use of tenanted premises for selling milk and curd is being done by a third person who has been illegally inducted by the plaintiff. Hence, the plaintiff having breached

statutory duties of tenant, is liable to be evicted and not entitled to any relief under the law. Hence, prayed for dismissal of the suit.

9. The learned trial Court after scrutinizing the oral as well as documentary evidence, dismissed the suit which was challenged in an appeal namely Regular Civil Appeal No. 200 of 2011 before the District Judge, Chandrapur. The said appeal came to be dismissed vide judgment and decree dated 23rd April, 2019. Hence, this appeal.

10. This Court vide order dated 9th October, 2019 has framed the following substantial questions of law:

i. Whether the Courts below acted beyond the scope of Section 29(7) of the Maharashtra Rent Control Act, 1999, while dismissing the suit filed by the appellants ?

ii. Whether the issue regarding the nature of business being undertaken by the appellants in the tenanted premises could have been an issue relevant for determining the relief sought by the appellants in the present case ?

11. It is pertinent to note here that the whole controversy relates with the supply of electric connection to the suit property. The electric connection is continued to be provided to the appellants by the respondent no.1 Maharashtra State Electricity Distribution Company Limited in pursuance to the interim relief granted by this Court vide order dated 9th October, 2019.

12. I have heard learned counsel for the respective parties.

13. Shri Khajanchi, learned counsel for the appellants submits that Section 29(7) of the Rent Act, 1999 gives protection to the tenant regarding the essential supply or services including electricity which is the subject matter of the present appeal. It is submitted that there is no dispute that there was a supply of electricity connection to the suit shop of the appellants. However, on disconnection of the same the re-connection was denied by the respondent no.1 on the ground that the proceeding under the Rent Act, 1999 is pending. It is thus submitted that the impugned action of the respondent no.1 is in contravention of Section 29(7) of the Rent Act, 1999.

14. He further argues that nature of business being undertaken by the appellants cannot be a ground or relevant issue determining the relief sought. He, therefore, submits that both the Courts have committed the error in dismissing the suit for mandatory injunction.

15. Respondent no.1 is served, however, nobody appears on behalf of the respondent no.1.

16. On the other hand, Shri Turankar, learned counsel for the respondent nos. 2, 3(1) to (5) submits that both the Courts below have rightly denied the relief sought by the appellants on the ground that they have changed the nature of business for which the suit shop was let out to them. Accordingly, he prays for dismissal of the appeal.

17. To consider the rival contentions of the parties, I have perused the record and proceeding and also the impugned judgment and decree passed by both the Courts below.

18. The respondent no.1/defendant no.1 is the Maharashtra State Electricity Distribution Company Ltd. The respondent no.1/defendant no.1 is not disputing that earlier the electric connection was provided to the suit shop and subsequently it was disconnected. If the impugned judgment and decree passed by both the Courts below are perused, it is evident that unnecessary importance was given to the fact of nature of business being carried out by the appellants in the suit shop.

19. Learned First Appellate Court has recorded its findings as follows:

“18. In order to rely on Section 29(7) of MRC Act, it is essential for plaintiff to establish functioning of the milk and milk product in the suit premises. The Trial Court found that plaintiff is having four sons, who are dealing with different separate business at different places. So far as plea of running milk shop is concerned, the Trial Court found that plaintiff has shown one Saya Bhamabai Khobragade as landlord, while the fact is that defendant nos. 2 and 3 are the landlords of the suit premises. In this background, the Trial Court is of the opinion, that neither the documents (Exh. 71, 73 and 80), nor oral evidence did prove that at any point of time, original plaintiff has run milk business in the suit premises. These documents are not showing the shop number or building number. Plaintiff has not explained what is the concern of said Saya Bhamabai Khobragade with the suit premises, when admittedly suit premises are owned by defendant Nos. 2 and 3.

19. The evidence of PW 2 Avinash Oblivar did indicate that he run business and for this purpose he has relied on original bill book

vide Exh.81. The Trial Court has rightly found that this bill book and bills therein are not disclosing shop number or building number. The bills were not signed by plaintiff or his legal heirs. The adjacent shop keepers were not examined to establish the fact of alleged running of milk shop in the suit premises.

20. The plaintiff has not denied that the permanent disconnection is occurred in 2007. The Trial Court has rightly posed question as to how the business of milk and milk related products can run without electricity till filing of the suit.

21. The Trial Court has, therefore, was of the view that plaintiff never did business of milk product in the suit premises.

22. Plaintiff has also alleged that there was submission of joint Income Tax Return, however, those returns are not produced on record to establish the fact that said business was run in the suit premises only. Plaintiff has also failed to prove any participation in sharing the profit and loss of alleged milk business. In above eventuality, the Trial Court has rightly held that plaintiff is not entitled for the relief of mandatory injunction.

23. As Trial Court found that plaintiff is not dealing with the milk business in the suit premises, therefore, there is no question of restoring amenities to plaintiff Section 29(7) of MRC Act, because the cause for reconnection is *non-est*. The Trial Court also found that without consent of defendant Nos. 2 and 3, plaintiff inducted PW 2 Avinash Obliwar in the suit premises illegally. The conduct of plaintiff disentitled him from claiming relief of mandatory injunction.”

20. Though both the Courts below have denied the relief to the plaintiffs and both the Courts have failed to discuss or record any findings about the relevance of the issue of nature of business being undertaken by the appellants in the suit shop, for reconnecting the electric supply.

21. Section 29(7) of the Act, 1999 is relevant, it is necessary to refer to the same to decide the controversy in the present matter. Section 29(7) of the Act, 1999 reads thus:

“29. Landlord not to cut-off or withhold essential supply or service

(7) Without prejudice to the provisions of sub-sections (1) to (6) or any other law for the time being in force, where the tenant-

(a) who has been in enjoyment of any essential supply or service and the landlord has withheld the same, or

(b) who desires to have, at his own cost, any other essential supply or service for the premises in his occupation,

the tenant may apply to the Municipal or any other authority authorised in this behalf, for the permission or for supply of the essential service and it shall be lawful for that authority to grant permission for, supply of such essential supply or service applied for without insisting on production of a “No Objection Certificate” from the landlord by such tenant.”

22. From the above referred provision it is evident that in case of withholding of essential supply or service, a tenant would desire of his own cost, any other essential supply or service for the premises in his occupation, he / she may apply to the concerned authority for supply of essential services and which shall be lawful for the authority to grant permission for, supply of essential supply or service applied for without insisting on production of a “No Objection Certificate” from the landlord by such tenant.

23. Though the learned Appellate Court has referred to Section 29(7) of the Rent Act, 1999, however, much emphasis has been given to the nature of business undertaken by the appellants. The nature of business done in the suit premises could be a good ground to ask for relief against the tenant by the landlord under the provisions of Rent Act, 1999. However, the change of purpose of letting out the rented premises or nature of business being undertaken by the tenant cannot be a relevant issue while deciding the suit for mandatory injunction in respect of providing re-connection of electricity.

24. It is further evident that for essential supply or services, the authority while granting permission for supply or essential services applied for by the tenant, there is no need to go into the issue or purpose of use being undertaken by the tenant and therefore even the ground on which re-connection was denied to the appellants by the respondent no.1 i.e. proceeding under the Maharashtra Rent Control Act, 1999 is pending, is not relevant for denying the re-connection to the appellants.

25. None of the respondents have pointed out anything which could justify the denial on the part of the respondent no.1 to provide re-connection of electric supply, to the appellants. Accordingly, I have answered the substantial questions of law.

26. In the circumstances, I have no hesitation to hold that both the Courts below have committed error in dismissing the suit. Accordingly, I pass the following order.

- i. Second Appeal is allowed.
- ii. The judgment and decree dated 10th August, 2011 passed by 7th Joint Civil Judge (Junior Division), Chandrapur in Regular Civil Suit No. 176 of 2009 and the judgment and decree dated 23rd July, 2019 passed by Principal District Judge, Chandrapur in Regular Civil Appeal No. 200 of 2011 are hereby quashed and set aside and the Regular Civil Suit No. 176 of 2009 is allowed.
- iii. Decree be drawn accordingly.

[ANIL S. KILOR, J.]